

HB 2123 - H AMD 817

By Representative Kirby

FAILED 05/23/2011

1 On page 15, line 25, after "(12)" insert "(a) The department,  
2 employers, and employer representatives have a duty of good faith and  
3 fair dealing to injured workers under this section. This duty is  
4 violated if the department or employer or employer representative:  
5 (i) Fails to comply with the terms of a claim resolution structured  
6 settlement agreement; (ii) uses the claim resolution settlement  
7 process to harass or coerce an injured worker; (iii) induces a worker  
8 to enter into an agreement through a material misrepresentation of law  
9 or fact; or (iv) induces a worker to enter an agreement that is  
10 unreasonable as a matter of law. The board of industrial insurance  
11 appeals may adopt by rule additional applications of a violation of  
12 the duty of good faith and fair dealing under this section.

13 (b) Notwithstanding RCW 51.04.010 or any other provision of this  
14 title, and in addition to any other remedy or penalty, a worker has a  
15 cause of action for damages against the department, employer or  
16 employer representative for violation of the duty of good faith and  
17 fair dealing under this section. The court may increase the damages to  
18 an amount not to exceed three times the actual damages and may award  
19 reasonable attorneys' fees and costs. If the court finds that the  
20 department, employer, or employer representative has failed to comply  
21 with a claim resolution structured settlement agreement, the court may  
22 also order compliance with the agreement.

23 (13)"

EFFECT: Imposes a duty of good faith and fair dealing by the Department of Labor and Industries (Department), employers, and employer representatives with respect to claim resolution structured settlement agreements (agreement). Provides that the duty is violated if the Department, employer, or employer representative fails to comply with the terms of an agreement, uses the agreement

process to harass or coerce a worker, or induces a worker to enter into an agreement through material misrepresentation of law or fact or that is unreasonable as a matter of law. Provides that the Board of Industrial Insurance Appeals may adopt by rule additional applications of a violation of the duty.

Provides that in addition to any other remedy or penalty, a worker has a cause of action for damages for violation of the duty of good faith and fair dealing. Allows the court to award treble damages, attorneys' fees, and costs. Allows the court to order compliance with an agreement.

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